

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DANIEL WILLIAMS and
EDWARD WILLIAMS,

Plaintiffs,

v.

ORDER
05-CV-836S

BEEMILLER, INC., CHARLES BROWN,
MKS SUPPLY, INC., INTERNATIONAL
GUN-A-RAMA, KIMBERLY UPSHAW,
JAMES NIGEL BOSTIC, CORNELL CALDWELL,
and JOHN DOE TRAFFICKERS 1-10,

Defendants.

1. On December 23, 2005, Plaintiffs filed a Motion to Remand this case to the New York State Supreme Court, Erie County.

2. On January 4, 2006, this Court referred this matter to the Honorable Leslie G. Foschio, United States Magistrate Judge, for all pretrial matters pursuant to 28 U.S.C. § 636(b)(1).

2. On June 29, 2006, Judge Foschio filed a Decision and Order granting Plaintiff's Motion to Remand. Specifically, Judge Foschio found that named Defendants Bostic, Caldwell, and Upshaw neither consented to nor joined in the removal of this case to federal court. (Dec. & Order, p. 8). Judge Foschio concluded that because the Removing Defendants "failed to satisfy the threshold requirement of obtaining the consent of all served Defendants to the removal, the action must be remanded." (Dec. & Order, p. 14). Judge Foschio also awarded Plaintiffs costs and attorneys' fees reasoning that the Removing Defendants' "asserted ground for removal is contrary to applicable law and established authority," and that their argument in support of removal "is properly characterized as spurious." (Dec. & Order, pp. 16-17).

3. On July 17, 2006, the Removing Defendants filed Objections to Judge Foschio's Decision and Order. Plaintiff responded to the Removing Defendants' Objections on August 4, 2006, and they replied on August 16, 2006.

4. Rule 72 of the Federal Rules of Civil Procedure provides, in pertinent part, that whenever a magistrate judge issues an order resolving a non-dispositive matter, a party may file objections to that order. Thereafter, "[t]he district judge to whom the case is assigned shall consider such objections and shall modify or set aside any portion of the magistrate judge's order found to be clearly erroneous or contrary to law." FED. R. CIV. P. 72 (a). In this district, a motion for remand is considered to be non-dispositive. See Holt v. Tonawanda Coke Corp., 802 F. Supp. 866, 868 (W.D.N.Y. 1991); see also Mahl Brothers Oil Co., Inc. v. St. Paul Fire & Marine Ins. Co., 307 F. Supp. 2d 474, 478 (W.D.N.Y. 2004) (denying objections to the Magistrate Judge's Decision and Order on Plaintiff's Motion to Remand using a "clearly erroneous" standard).

5. After carefully considering the arguments of counsel and the applicable law, this Court finds that Judge Foschio's Decision and Order is neither clearly erroneous nor contrary to law. Essentially, the Removing Defendants ask this Court to determine *de novo* whether removal was proper in this case. However, in this district, Judge Foschio's decision on Plaintiffs' Motion to Remand is entitled to greater deference than the Removing Defendants suggest. The Removing Defendants also seek to have this Court reconsider cases from outside the Second Circuit, which Judge Foschio found to be "inapposite" in light of the "persuasive authority from other district courts within the Second Circuit." (Dec. & Order, p. 9 n. 4). This Court finds, however, that the Removing Defendants have failed to establish sufficient cause to disturb Judge Foschio's conclusions regarding the

persuasiveness of such authority. Accordingly, the Removing Defendants' Objections to Judge Foschio's Decision and Order are denied.

11. For the foregoing reasons, this Court finds that Judge Foschio's Decision and Order (Docket No. 31) was neither clearly erroneous nor contrary to law.

IT HEREBY IS ORDERED that the Removing Defendants' Objections (Docket No. 34) to the Decision and Order of Magistrate Judge Foschio are DENIED.

SO ORDERED.

Dated: September 21, 2006
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge